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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ELISABETTA CARREA

Appeal 2009-002259
Application 10/814,167
Technology Center 3700

Decided:¹ July 23, 2009

Before WILLIAM F. PATE III, STEVEN D.A. McCARTHY
and KEN B. BARRETT, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304 (2008), begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or the Notification Date (electronic delivery).

STATEMENT OF THE CASE

2 The Appellant appeals under 35 U.S.C. § 134 (2002) from the
3 Examiner's decision finally rejecting claims 1, 2, 4-10, 22-25 and 28 under
4 35 U.S.C. § 103(a) (2002) as being unpatentable over Golomb (US
5 5,724,805, issued Mar. 10, 1998) and Wunning (US 5,154,599, issued Oct.
6 13, 1992); finally rejecting claims 3, 12-14, 16, 20, 21 and 25 under § 103(a)
7 as being unpatentable over Golomb, Wunning and Yoshimoto (JP 10-89614
8 A1, publ. Apr. 10, 1998); finally rejecting claims 11 and 15 under § 103(a)
9 as being unpatentable over Golomb, Wunning and Griffin (US 6,947,098
10 B2, issued Dec. 24, 2002); finally rejecting claims 17-19 under § 103(a) as
11 being unpatentable over Golomb, Wunning, Griffin and Benson (US
12 5,636,977, issued Jun. 10, 1997); and finally rejecting claims 26 and 27. We
13 have jurisdiction under 35 U.S.C. § 6(b) (2002).

14 We AFFIRM the Examiner's decision rejecting claims 1-25 and 28.
15 Although the Examiner and the Appellant agree that claims 26 and 27 stand
16 rejected (*See* Final Office Action, Dec. 8, 2006 at 1; Br. 3), the Examiner has
17 not articulated any reason for rejecting these claims. We summarily
18 REVERSE the Examiner's decision rejecting claims 26 and 27.

19 Claim 1 is the sole independent claim on appeal:

20
21 1 A combustion process comprising:
22 forming a substantially nitrogen-free gas
23 mixture from oxidant, fuel, and inert gas;
24 and
25 combusting said gas mixture in a burner,
26 wherein combusting comprises flameless
27 combustion.

ISSUES

2 The Appellant argues independent claim 1 and dependent claim 12
3 separately. Claims 2, 4-10, 22-24 and 28 stand or fall with claim 1 for
4 purposes of the rejection of those claims under § 103(a) as being
5 unpatentable over Golomb and Wunning. Claims 3, 12-14, 16, 20, 21 and
6 25 stand or fall with claim 12 for purposes of the rejection of those claims
7 under § 103(a) as being unpatentable over Golomb, Wunning and
8 Yoshimoto. (Br. 5). Since claim 25 depends from claim 12, we do not
9 sustain the Examiner's rejection of claim 25 under § 103(a) as being
10 unpatentable over Golomb and Wunning alone.

11 The Examiner finds that Golomb discloses forming a substantially
12 nitrogen-free gas mixture from substantially pure oxygen, an oxidant; fuel;
13 and carbon dioxide, an inert gas. (See Ans. 4). The Examiner concludes
14 that the method of claim 1 would have been obvious since Wunning would
15 have suggested combusting the gas mixture using flameless combustion so
16 as to lower nitrogen oxide [“NO_x”] values and reduce noise in the burner
17 (Ans. 14). The Appellant contends that Golomb and Wunning would not
18 have provided one of ordinary skill in the art reason to use flameless
19 combustion to lower NO_x since Golomb’s fuel mixture is nitrogen-free even
20 before combustion. (Br. 15).

21 The Examiner concludes that the installation of claim 12 would have
22 been obvious since Yoshimoto would have suggested bringing the oxygen
23 and fuel together in the burner to form a gas mixture having a temperature
24 above the self-ignition temperature of the gas mixture so as to ignite without
25 need for a pilot burner. (Ans. 17). The Appellant, based on the drawing
26 figures of Yoshimoto, appears to contend that Yoshimoto does not disclose

1 heat transfer between the hot combustion gases and the combustion air
2 sufficient to bring the fuel and air to a temperature above the self-ignition
3 temperature. (Br. 16).

4 The Appellant relies solely on the contentions directed against the
5 rejections of claims 1 and 12 in support of the patentability of claims 11 and
6 15 over Golomb, Wunning and Griffin and of claims 17-19 over Golomb,
7 Wunning, Griffin and Benson.

8 This appeal turns on two issues:

9 Has the Appellant shown that the Examiner failed to
10 articulate reasoning with some rational underpinning sufficient
11 to support the conclusion that Golomb and Wunning would
12 have provided one of ordinary skill in the art reason to use
13 flameless combustion to oxidize a nitrogen-free mixture of
14 substantially pure oxygen, fuel and carbon dioxide?

15 Has the Appellant shown that the Examiner failed to
16 articulate reasoning with some rational underpinning sufficient
17 to support the conclusion that Golomb, Wunning and
18 Yoshimoto would have provided one of ordinary skill in the art
19 reason to include bringing oxygen and fuel together in a burner
20 to form a gas mixture having a temperature above the self-
21 ignition temperature of the gas mixture prior to oxidizing the
22 oxygen and fuel by flameless combustion?

24 FINDINGS OF FACT

25 The record supports the following findings of fact (“FF”) by a
26 preponderance of the evidence.

1 1. Golomb discloses a natural gas-fired power plant comprising an
2 air separation/CO₂ capture [“AS/CC”] unit and a gas turbine including a
3 combustor. (Golomb, col. 5, ll. 35-45).

4 2. Golomb’s AS/CC separates air into liquid oxygen, gaseous
5 nitrogen and argon. The liquid oxygen is evaporated in the process of
6 condensing carbon dioxide produced in the combustor. (*Id.*)

7 3. Golomb describes mixing the oxygen with exhaust gas, that is,
8 carbon dioxide, and supplying the mixture to the combustor. (Golomb, col.
9 7, ll. 53-56). The oxygen and carbon dioxide mix with natural gas fuel in
10 the combustor prior to combustion. (Golomb, col. 9, l. 66 – col. 10, l. 3).

11 4. Golomb also describes supplying the oxygen directly to the
12 combustor. (Golomb, col. 7, ll. 56-58). The oxygen mixes with natural gas
13 fuel in the combustor prior to mixing with diluting carbon dioxide.

14 5. Golomb describes gradually introducing diluting carbon
15 dioxide along the combustor to oxidize any carbon monoxide entrained in
16 the carbon dioxide as fully as possible. (Golomb, col. 9, ll. 60-61 and col.
17 10, ll. 8-14).

18 6. Wunning describes combusting a mixture of exhaust gas,
19 combustion air and fuel by means of substantially flameless, pulse-free
20 oxidation. (Wunning, col. 2, ll. 36-50).

21 7. Wunning discloses that, to set the flameless oxidation of the
22 fuel in motion, an adequate quantity of exhaust gas for admixing with the
23 combustion air must be available and the mixture of combustion air and
24 exhaust gas must be at least at ignition temperature. (Wunning, col. 4, ll. 1-
25 5; *see also id.*, col. 6, ll. 55-61).

1 8. Wunning discloses that one advantage of oxidizing the fuel by
2 flameless combustion is the relatively low temperature of oxidation leads to
3 low nitrogen oxide formation. (Wunning, col. 2, ll. 18-20 and col. 2, l. 62 –
4 col. 3, l. 3).

5 9. Wunning discloses that another advantage of oxidizing the fuel
6 by flameless combustion is a drastic reduction in the noise level in the
7 combustion chamber due to the suppression of pressure fluctuations in the
8 flame. (Wunning, col. 3, ll. 3-9).

9 10. Yoshimoto describes a radian tube burner including a pair of
10 alternately-activated burners. (Yoshimoto 22, ¶ 0023). Yoshimoto's radian
11 tube burner includes rows of heat accumulating bodies positioned near each
12 of the burners. (Yoshimoto 15-16, ¶ 0016). The heat accumulating bodies
13 accumulate heat from the exhaust gases generated in the radian tube burner.
14 The heat accumulating bodies use the accumulated heat to preheat the
15 combustion air and the fuel. (*Id.*; Yoshimoto 36, ¶ 0036).

16 11. Yoshimoto discloses that preheating the combustion air above
17 the natural ignition temperature of the fuel obviates the need for a pilot
18 burner. (Yoshimoto 36-37, ¶ 0036).

PRINCIPLES OF LAW

21 The Appellant has not identified any objective evidence in the record
22 which might have tended to prove secondary indicia of nonobviousness.
23 (See Br. 24). Therefore, the Appellant's burden on appeal is to show that the
24 Examiner has produced insufficient evidence of *prima facie* obviousness. *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006)(emphasis omitted).

ANALYSIS

2 The Appellant has not met this burden with respect to the rejection of
3 representative claim 1. The Appellant does not dispute that Golomb
4 describes forming a substantially nitrogen-free gas mixture from oxidant,
5 namely, substantially pure oxygen; a fuel, namely, natural gas; and inert gas,
6 namely, carbon dioxide. (See Br. 9; *see also* FF 2-5). Neither does the
7 Appellant dispute that Wunning describes benefits of flamelessly
8 combusting a gas mixture including combustion air, fuel and carbon dioxide
9 in a burner. (See Br. 10; *see also* FF 6, 8 and 9). The Examiner concludes
10 that the teachings of Golomb and Wunning would have provided one of
11 ordinary skill in the art reason to form the substantially nitrogen-free gas
12 mixture of substantially pure oxygen, natural gas and carbon dioxide
13 described by Golomb and then combust the gas mixture flamelessly in a
14 burner.

15 The Examiner articulates two such reasons for the combination: First,
16 the Examiner concludes that one of ordinary skill in the art would have
17 recognized from the teachings of Wunning that the use of flameless
18 combustion would have lowered the nitrogen oxide level produced by the
19 combustion. Second, the Examiner concludes that that one of ordinary skill
20 in the art would have recognized from the teachings of Wunning that the use
21 of flameless combustion would have lowered the noise level produced by the
22 combustion. (Ans. 14). The Appellant attacks the first reason as lacking
23 rational underpinning in the teachings of Golomb and Wunning (Br. 15) but
24 fails to provide any explanation as to why the second reason might lack such
25 rational underpinning. Since the Examiner has articulated reasoning with
26 some rational underpinning (*see, e.g.*, FF 9) in support of the legal

1 conclusion of obviousness, the Examiner's rejections of representative claim
2 1 and of the claims grouped with claim 1 stand. *See Kahn*, 441 F.3d at 988.

3 Neither has the Appellant met the burden with respect to the rejection
4 of representative claim 12. Golomb discloses bringing oxygen and fuel
5 together in the burner first to form a gas mixture. (FF 4 and 5). The
6 Appellant does not dispute that Wunning discloses preheating the oxidant,
7 namely, the combustion air, above the self-ignition temperature of the gas
8 mixture. (*See* Br. 10). In fact, Wunning suggests that preheating the
9 combustion air so as to raise the temperature of the mixture above the self-
10 ignition temperature promotes setting flameless combustion in motion. (*See*
11 FF 7). These teachings and suggestions themselves would have provided
12 one of ordinary skill in the art reason to provide an installation useful for
13 carrying out the method of representative claim 1 including a mixture
14 forming device configured and arranged to bring oxygen and fuel together in
15 a burner to form a gas mixture having a temperature above the self-ignition
16 temperature of the gas mixture.

17 The Examiner finds that Yoshimoto discloses preheating combustion
18 air or fuel above the self-ignition temperature of a combustion gas mixture
19 in order to promote the ignition of the combustion gas mixture without a
20 pilot burner. (*See* Ans. 16-17; *see also* FF 10 and 11). Yoshimoto describes
21 preheating the combustion air or gas using heat from the exhaust gas through
22 the medium of heat accumulating bodies (FF 10), even assuming for
23 purposes of this appeal only the absence of substantial heat transfer through
24 direct contact between the combustion gas mixture and the exhaust gas. As
25 the Examiner concludes (*see* Ans. 6), this disclosure, together with
26 Wunning's suggestion that preheating the combustion air so as to raise the

1 temperature of the mixture above the self-ignition temperature promotes
2 setting flameless combustion in motion, would have provided one of
3 ordinary skill in the art reason to provide an installation useful for carrying
4 out the method of representative claim 1 including a mixture forming device
5 configured and arranged to bring oxygen and fuel together in a burner to
6 form a gas mixture having a temperature above the self-ignition temperature
7 of the gas mixture. Since the Examiner has articulated reasoning with some
8 rational underpinning in support of the legal conclusion of obviousness, the
9 Examiner's rejection of representative claim 12 and of the claims grouped
10 with claim 12 stand.

11

12 CONCLUSIONS

13 The Appellant has not shown that the Examiner failed to articulate
14 reasoning with some rational underpinning sufficient to support the
15 conclusion that Golomb and Wunning would have provided one of ordinary
16 skill in the art reason to use flameless combustion to oxidize a nitrogen-free
17 mixture of substantially pure oxygen, fuel and carbon dioxide. Therefore,
18 the Appellant has not shown that the Examiner erred in rejecting claims 1, 2,
19 4-10, 22-24 and 28 under § 103(a) as being unpatentable over Golomb and
20 Wunning.

21 The Appellant has not shown that the Examiner failed to articulate
22 reasoning with some rational underpinning sufficient to support the
23 conclusion that Golomb, Wunning and Fujii would have provided one of
24 ordinary skill in the art reason to include bringing oxygen and fuel together
25 in a burner to form a gas mixture having a temperature above the self-
26 ignition temperature of the gas mixture prior to oxidizing the oxygen and

1 fuel by flameless combustion. Therefore, the Appellant has not shown that
2 the Examiner erred in rejecting claims 3, 12-14, 16, 20, 21 and 25 under
3 § 103(a) as being unpatentable over Golomb, Wunning and Yoshimoto.

4 The Appellant relies solely on the contentions directed against the
5 rejections of claims 1 and 12 in support of the patentability of claims 11 and
6 15 over Golomb, Wunning and Griffin and of claims 17-19 over Golomb,
7 Wunning, Griffin and Benson. Therefore, the Appellant has not shown that
8 the Examiner erred in rejecting claims 11 and 15 under § 103(a) as being
9 unpatentable over Golomb, Wunning and Griffin or in rejecting claims 17-
10 19 under § 103(a) as being unpatentable over Golomb, Wunning, Griffin and
11 Benson.

12

DECISION

14 We AFFIRM the Examiner's decision rejecting claims 1-25 and 28.

15 We REVERSE the Examiner's decision rejecting claims 26 and 27.

16 No time period for taking any subsequent action in connection with
17 this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.
18 § 1.136(a)(1)(iv) (2007).

19

20 AFFIRMED-IN-PART

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